CONFERENCE ON DISARMAMENT

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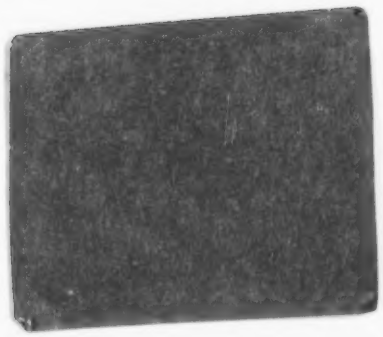
LETTER DATED 14 AUGUST 1997 FROM THE PERMANENT REPRESENTATIVE OF CHILE ADDRESSED TO THE SECRETARY-GENERAL OF THE CONFERENCE ON DISARMAMENT TRANSMITTING THE TEXT OF A PROPOSAL ENTITLED: "SUGGESTIONS FOR UPDATING THE CD's RULES OF PROCEDURE", INCLUDING A "PROPOSED DRAFT"

Attached is the text of a proposal of Chile entitled: "Suggestions for updating the CD's Rules of Procedure", including a "Proposed Draft".

I would be grateful if you would issue this text as an official document of the Conference on Disarmament and distribute it to all member States and non-member participants in the work of the Conference on Disarmament.

(Signed): Javier Illanes
Ambassador
Permanent Representative



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CHILE

Suggestions for updating the CD's Rules of Procedure

The origins of the Conference on Disarmament are implicit in the decision adopted in 1959 by the foreign affairs ministers of France, the United Kingdom, the United States and the Union of Soviet Socialist Republics in order to establish a negotiating forum, independent of the United Nations system, but linked to it. The ten Nations Disarmament Committee (TNDC) (5 NATO - 5 WARSAW PACT) only briefly operated in 1960.

The actual history of the Conference originates, moreover, with the UN General Assembly resolutions (1722 XVI) (2602 B XXIV) and (A/37/99 K III) which contribute to the gradual expansion in its composition and to the evolution of its structure and functions: the Eighteen nations (ENDC) the 26 of the Conference of the Committee on Disarmament (CCD) and the 40 of the Conference on Disarmament (CD).

The first procedural arrangements, from the time of the ENDC, consisted in recommendations coordinated by the co-Chairmen (USA-USSR) and it was Mexico's privilege to initiate a critical review of the foundations of the process of international disarmament. Between 1969 and 1973, the Mexican delegation introduced at least 5 working documents on organizational matters.

The Conference on Disarmament, as the single multilateral global disarmament body of the international community, recognized and made provision throughout its history for enhanced participation by its own member States and by States not members of the Conference, but participating in its work, in the negotiation of disarmament treaties and other international agreements intended to attract universal adherence.

Some of the more substantive working papers on this issue were produced by the Group of Eight (CD/550), by Sweden (CD/554), by Nigeria (CD/555) and by Mexico (CD/561). The Swedish proposals crystallized in the present articles 33, 34 and 35 of the Rules of Procedure.

Starting from 1976, the Committee on Disarmament and its successor organs, adopted a series of decisions on organizational matters which have, to a certain extent, been codified in the present Rules of Procedure. Quite often, however, the Rules of Procedure, due to their brevity, fail to capture the full scope of the decisions listed below:

- Decision CCD/500 (1 July 1976) on the structure and content of reports, including the annual report to the UN General Assembly. At the same time and during the same 708 CCD meeting, some groundwork was done on the subsidiary bodies being established for the ENMOD Convention and subsequent treaties to be negotiated.

- Decision CCD/532 (21 April 1977). When it appears that there is basis to negotiate a draft treaty, a working group open to CCD members will be established and appropriate documentation will be sent to all member States of the UN.

- At the 69th Plenary meeting on 17 March 1980 (CD/PV.69), it was agreed that representatives of non-member States shall have seats reserved for discussions concerning security assurances and a comprehensive disarmament programme. Such decision preceded the adoption of the Rules of Procedure under the Argentine presidency.

- At the 86th Plenary meeting on 24 June 1980 (CD/PV.86), it was decided that States not members of the Conference may participate in the informal expert meetings on chemical weapons (Denmark, Finland and Switzerland participated in this subsidiary body.

- At the 92nd Plenary meeting on 15 July 1980 (CD/PV.92), it was agreed that States not members of the CD but members of the Ad Hoc Group of Scientific

Experts may participate in the meeting called to examine the Ad Hoc Group's Report.

- At the 575th Plenary meeting on 21 August 1990 (CD/PV.575), it was decided that Rules 7, 9 and 28 of the Rules of Procedure would be amended and action would be taken on the Improved and Effective Functioning of the Conference on Disarmament.

- At the 603rd Plenary meeting on 22 August 1991 (CD/PV.603), the Presidential Statement defined the current practice on participation by States not members of the Conference on Disarmament in the work of the Conference.

Since 1991, there have been few innovations in the CD practice and participation by non-member States in the negotiation of the CTBT has been based on the precedent established by the negotiation of the CWC. Nevertheless, UN General Assembly resolutions and decisions concerning expansion of the Conferences (CD/1356 and CD/1360) would be taken into account when rewriting the Rules of Procedure. In other aspects, such as the relationship to the whole of the UN system and to non-governmental organizations, the CD has been particularly insensitive to the significant developments which have taken place in those fields.

There are many reasons to justify a review of its Rules of Procedure by the Conference on Disarmament. Although the corpus of those rules is substantially sound, many aspects correspond to the "Cold War" concepts which no longer stand unchallenged, such as the notion that the CD is "a disarmament negotiating forum open to the nuclear weapon States and 35 other States". Within such a framework, it is hardly conceivable that the issues of nuclear disarmament may be avoided by the CD. The proposal is made that no specific or separate identity should be attributed to members; that the review process should include the current practice on the matter; and that Rule 3 should be transferred as a "chapeau" Section VII (Conduct of Work and adoption of decisions) where it may find a more congenial home.

Only minor changes affect Section II (Representation and Accreditation). While the authority of the Minister of Foreign Affairs has been maintained, subsequent changes in the composition of delegations may be notified by their respective Heads. This procedure follows the one recently agreed in the CWC. Procedures concerning accreditation of States not members of the CD have been included also in this Section, since they are identical to those applicable to CD member States.

There are no changes ion Section III (Sessions). The contents of Decision CD/1036 concerning intersessional consultations after the end of the annual session have been incorporated at the end of Section IV (Presidency). Section V (Secretariat) remains unchanged.

Order and structure of subsequent Sections VI, VII and VIII have been altered, with the aim to initiate the sequence of the process with the adoption of the Agenda and programme of work; then lay the basic rules for the conduct of work and adoption of decisions, which are of a broader nature and scope than the single rule of consensus; and finally proceed with the more detailed material, practical and organizational aspects of the CD's work. A limited amount of additions refer to preparatory work, consultations and the schedule of activities which should not be ignored in the range of subjects contemplated in the programme of work.

There is, however, a new approach in the proposed opening of negotiating organs or bodies to non-members participating in the work of the Conference when "it clearly appears that there is a basis to negotiate a draft treaty ...". Such approach is tempered by a new rule concerning the application of the CD's Rules of Procedure, or any ad hoc procedure to a subsidiary body whose composition would be larger than the actual CD membership. The flexibility allowed by the present Rule 24 has been adapted to the needs of the new Rule 32, with the intent of reconciling the need for universality in the negotiating process of disarmament treaties and the retention of

sufficient authority by the CD on the conduct of its work.

Section IX (Participation by States not members of the Conference) has been streamlined and updated with the current practice of the Conference following the Presidential Statement of 1991. As is known, present Rules 32 and 36 reflect the concept of shared responsibility and the inherent right of every State member of the UN to participate in disarmament affairs (Paragraph 28 of the Final Document of the I Extraordinary Period of Sessions of the UGA); the identity of the procedures of accreditation for members and non members alike and the concern to allow sufficient space for non-members in plenary and other meetings reminds us that, as a matter of principle, the right to attend the CD plenaries belongs to every State member of the UN.

Such right may be exercised at any time and is not subject to any CD decision. Nevertheless, specific modalities for participation of non-member States are set out under Rules 33 to 35. Under the final paragraph of Decision CD/1036, the Secretariat is called upon to inform non-member States before the beginning of the annual session of the Conference's opening date, in order to enable interested States to formulate their requests in time for participation in the work of the Conference and its subsidiary bodies. The Secretariat performs this duty with a perfunctionary reference to Rules 33 to 35 which the actual practice of the Conference has made obsolete or inapplicable.

Rules 33 and 34 are now obsolete since it is not practical to restrict discussions concerning issues raised by documents or proposals introduced by non-members; or to follow more of less elaborate procedures in order to grant requests for oral interventions by those non-members. Rule 35 has also evolved in the context of the Presidential Statement of 1991 and a decision ad casus is no longer taken, being replaced by a single decision allowing for broad participation of the requesting State in all meetings. While an attempt is made to codify actual practice in matters concerning participation, the need to clearly distinguish such modalities of participation from the right of any State to attend CD Plenaries has been preserved and further spelled out.

No changes have been introduced in Section X (Languages, records and documents). It is true that CD decisions have dealt, to a certain extent, with the modalities of CD communiques. Although we have, in some instances, introduced language from CD decisions which had not been included in the present Rules of Procedure, we have refrained from doing so in this specific matter, considering that the actual practice and prerogatives of CD Presidents may lead towards a more flexible path. However, this issue is linked to that of verbatim records and the CD Report, and may deserve further attention.

Sections XI (Invitations to organs of the UN system) and XII (Non-governmental organizations) have been redrafted. The first one, in order to introduce appropriate hierarchy and purpose and respond better to the intent of the heading, duly taking into account the realities of the international disarmament regime; the second, in order to recognize, in a prudent but more realistic manner, the importance of NGO's in disarmament affairs, an issue which the CD has addressed recently but in an inconclusive way.

Changes in Section XIII (Reports to the United Nations General Assembly) do not affect the existing structure of the Section but incorporate elements which contribute to stress the continuity in CD work. Section XIV (Amendments) remains untouched.

Except for a slight reformulation of Rule 21 (new Rule 27) no attempt has been made to modify the rule of consensus. We are attracted to the proposal by the former Representative of Japan to introduce a distinction between matters of substance and matters of procedure. The Representative of Mexico has mentioned an old proposal by the G-21 in that direction., But the rule of consensus is enshrined in the actual text of the Rules of Procedure, in an interpretative statement and rooted in the tradition of CD practice. Performance of other bodies, such as the Meeting of the Antarctic Treaty Consultative Parties, which also operate under the rule of consensus but very seldom explicitly veto a proposal, should be closely studied and analyzed.

The Chilean Delegation is introducing this modified draft of the Rules of Procedure as a basis for future discussion in the CD, and as a contribution to the work entrusted to the Coordinator appointed for the Improved and effective Functioning of the Conference on Disarmament.

PROPOSED DRAFT

RULES OF PROCEDURE OF THE CONFERENCE

ON DISARMAMENT

INTRODUCTION

These Rules of Procedure were adopted taking into account the relevant provisions of the final document of the first special session of the General Assembly devoted to disarmament, including the agreement reached following appropriate consultations among the member States during that session which the General Assembly welcomed in the final Document. They have been subsequently reviewed following the expansion of the membership of the Conference on disarmament and the further development of procedures with a view to facilitate and enhance participation of States not members of the Conference, independent experts and other organs of the United Nations system.

I. Functions and Membership.

1. The Conference on disarmament (hereinafter referred to as the Conference) is the single multilateral global disarmament negotiating body of the international community.

2. The membership of the Conference includes the (sixty) (sixty-one) countries listed in anne I. *

3. The membership of the Conference will be reviewed at regular intervals following the presentation of progress reports by the President of the Conference at the end of its annual session. The results of the review process shall be included in the report submitted to the United Nations General Assembly.

II. Representation and accreditation

4. (Idem to present 4)

5. Each delegation shall be accredited by a letter on the authority of the Minister of Foreign Affairs of the member State, addressed to the President of the Conference. Subsequent changes in the composition of delegations to the Conference may be notified to the President of the Conference by their respective Heads.

6. The provisions of Rules 3 and 4 shall apply to the delegations of States not members of the Conference participating in its annual session.

7. (Idem to present 6).

8. Delegations of States not members of the Conference shall be seated following the English alphabetical list, beginning with the non-member whose name will be drawn by lots by the President of the Conference and shall rotate at the same time as the States members of the Conference.

III. Sessions

9. (Idem to present 7).

10. (Idem to present 8).

IV. Presidency

11. (Idem to present 9).

12. (Idem to present 10).

13. (Idem to present 11).

14. (Idem to present 12).

15. The representative of the member State who presided over the last plenary meeting at the end of the annual session of the Conference and the representative of the member State assuming the Presidency next in order of rotation shall jointly conduct consultations during the inter-sessional period between the two annual sessions in order to facilitate consensus on the adoption of the agenda, the establishment of subsidiary bodies and their mandates.

V. Secretariat

16. (Idem to present 13).

17. (Idem to present 14).

18. (Idem to present 15).

19. (Idem to present 16).

VI. Agenda and programme of work.

20. At the beginning of each annual session, the Conference shall adopt its agenda for the year. In doing so, the Conference shall take into account the recommendations made to it by the General Assembly, the proposals presented by member States of the Conference and the decisions of the Conference, as well as any preparatory work done to that end during its previous session and the results of the consultations carried on intersessionally in conformity with Rule 15.

21. On the basis of its agenda, the Conference, at the beginning of its annual session, shall establish its programme of work which will include a schedule of its activities to that session, structures to indicate with flexibility the range of subjects to which references would primarily be made in plenaries, taking also into account the recommendations, proposals, decisions, as well as the preparatory work and the consultations referred to in Rules 15 and 20.

22. (Idem to present 29).

23. The subject of statements made in plenary meetings will normally correspond to the topic then under discussion in accordance with the agreed programme of work and schedule of its activities for the current annual session. However, it is the right of any member State of the Conference to raise any subject relevant to the work of the Conference at any plenary meeting and to have full opportunity of presenting its views on any subject which it may consider to merit attention.

24. (Idem to present 31).

VII. Conduct of work and adoption of decisions.

25. (Idem to present 3).

26. (Idem to present 18).

27. If consensus is not attainable when an item comes up for decision, the Conference shall consider the subsequent examination of that item and make every effort to facilitate the achievement of consensus (Reformulation of Rule 21).

28. (Idem to present 25).

VIII. Organization of the work.

29. (Idem to present 19).

30. The Conference may decide to establish such subsidiary bodies as it deems necessary for the effective performance of its functions. The Conference shall define the mandate for each subsidiary body and provide appropriate support for its work.

31. In case of absence of consensus on the establishment of any particular subsidiary body or its mandate, and after the expiration of the time allocated to debate the relevant proposal for such a subsidiary group or its mandate, the President of the Conference shall proceed to identify a Special Coordinator or a Friend of the Chair to assist in carrying out informal consultations with a view to reaching consensus.

32. Whenever the Conference deems its advisable, including when it clearly appears that there is a basis to negotiate a draft treaty or other texts or agreements requiring universal adherence, the Conference may decide that the negotiating organs or bodies be opened, in addition to all States members of the Conference, to States not members but participating in the work of the Conference.

33. The Conference may then decide if its own rules of procedure may be adapted to the specific requirement of a subsidiary body, taking into account i.a. the circumstances contemplated in the preceding rule.

34. (Idem to present 26).

IX. Participation by States not members of the Conference.

35. Representatives of States not members of the Conference may attend plenary meetings and, if the Conference so decides, other meetings.

36. The Conference may invite States not members of the Conference, on request, to participate in its work. Unless decided otherwise by the Conference, these States may participate in plenary meetings, informal plenary meetings on substantive items of the agenda, and meetings of subsidiary bodies established in accordance with Rule 30, without having to specify in advance which ones.

37. The Secretariat shall inform States not members of the Conference before the commencement of each annual session of the Conference's opening date, in order to enable interested States to attend the plenary meetings if they so wish, and to formulate in a timely manner their requests for participation in the work of the Conference and its subsidiary bodies.

38. Interested States not members of the Conference may submit to the Conference written proposals or working documents on measures of disarmament that are subject to negotiations in the Conference.

39. States not members of the Conference may express their views in the plenary pursuant to the established list of speakers. When the particular concerns of a State not member of the Conference are under discussion in any of its organs or subsidiary bodies, the Conference shall invite that State as soon as it has taken cognizance of a request to that effect.

X. Languages, records and documents.

40. (Idem to present 37).

41. (Idem to present 38).

42. (Idem to present 39).

43. (Idem to present 40).

XI. Invitations to organs of the United Nations system.

44. The Conference may decide to invite the UNIDIR and other organs of the United Nations system, the IAEA as well as specialized agencies, and the secretariats of the appropriate bodies of disarmament organizations and agreements to provide information which may benefit its work.

XII. Non-governmental Organizations.

45. Non-governmental organizations may circulate documents and address communications to the Conference. The Secretariat shall periodically update and circulate a list of such documents and communications.

XIII. Reports to the United Nations General Assembly

46. (Idem to present 43).

47. (Idem to present 44).

48. All reports of the Conference shall be factual and fully reflect the negotiations and the work of the Conference.

49. Unless the Conference decides otherwise, the annual report shall contain i.a. :

a) (idem to present a of 45).
b) " " " b " "
c) " " " c " "
d) " " " d " "
e) " " " e " "
f) working papers and proposals submitted during the year, with reference to items comprised in a. en b. above and other matters raised in the Conference during the year.
g) Verbatim records of the meetings held during the year, to be included in a separate Anne.
h) Any preparatory work done by the Conference on the agenda of the following year.
i) (idem to present h of 45).

XIV. Amendments

50. (Idem to present 47)